"Before a gift to executors *eo nomine* can be held to vest in them individually, the intention that it should so vest must be plainly manifested." PERRY ON TRUSTS, § 155. Emphasis is laid upon the fact that the will in question was drawn up by the original trustee, himself a lawyer. This circumstance is considered as not only inviting great circumspection, but as authorizing the court to construe the language used as unfavorably to the claim of defendant as the language will permit. Adopting this rule of strict construction, the court examines into the various facts of the case and concludes that what testatrix intended was to leave the disposition of the remainder of such trust fund to such purposes as her trustee, acting as a trustee, and not as an individual, should think best. A strong dissenting opinion is submitted by GRANT, J., with whom concur MCALVAY, C. J., and CARPENTER, J. This opinion holds that the language of the fourth clause excludes the idea of a trust, and that there is no room for the application of the doctrine of an "express trust for an indefinite purpose." The cases of *Minot* v. *Attorney General, etc.*, supra; *Forster* v. *Winfield,* supra; *Morice* v. *Bishop of Durham,* 9 Ves. Jr. 399; *White* v. *Crossman* (N. J. Ch.), 64 Atl. 168, are distinguished from the principal case as containing language from which it might fairly be inferred that the executor or trustee took the property in trust for some purpose. The following cases are cited as supporting this opinion: *Beck's Appeal,* 116 Pa. St. 547, 9 Atl. 942; *Gibbs* v. *Rumsey,* 2 Ves. & Bea. 294; *Powell* v. *Powell's Ex'rs.,* 6 N. C. 326; *Bulfer* v. *Willigrod,* 71 Iowa 620, 33 N. W. 136; *Taft* v. *Taft,* 130 Mass. 461; *Jacob* v. *Macon,* 20 La. Ann. 162; *Apreece* v. *Apreece,* 1 V. & B. 364; *Paice* v. *Archb. of Canterbury,* 14 Ves. Jr. 370; *Jones* v. *Jones,* 25 Mich. 401.

WILLS—DISTINGUISHED FROM DEEDS—FUTURE INTEREST.—A written instrument made by plaintiff, purporting to be a deed of the land in controversy to her husband, contained the following provision: "This deed is made with the full understanding and upon the condition that the same shall take effect from and after the death of the grantor herein, and it is understood and intended that this deed shall be recorded immediately after my death." The instrument, together with a will of the husband made at the same time, was deposited in a bank, where it remained until the husband's death. This action to quiet title was brought by the widow against the heirs of the deceased husband, who claimed a residuary interest in the land through said instrument. *Held,* that the instrument was testamentary and hence revocable. *Sappingfield* v. *King et al.* (1907), — Ore. —, 89 Pac. Rep. 142.

After taking up the question of delivery, and holding that there was no delivery in this case because the intention of the parties was to the contrary, the court considers the meaning and effect of the clause above quoted as affecting the vesting of the estate. The court holds that the effect of this clause is to render the instrument testamentary and therefore revocable, even though delivered. In its decision the court relies upon the rule stated in *Turner* v. *Scott,* 51 Pa. St. 126. "Whatever the form of the instrument, if it vest no present interest, but only appoints what is to be done after the death of the maker, it is a testamentary instrument." This rule is conceded by the

overwhelming weight of authority; it is thus stated in UNDERHILL, WILLS, § 37: "If the instrument, though it is in form a deed, does not convey any vested interest, right, or estate until the death of the person executing it, it will be regarded as testamentary and revocable. * * * If from all the evidence it appears to have been the intention of the maker that the instrument shall have a post mortem effect only, it will be held to be a testament and not a deed." The question, therefore, is one of interpretation, turning upon the construction to be given the clause of the instrument which provides that it shall take effect from and after the death of the grantor, plaintiff herein. The opinion cites a number of cases in which instruments containing clauses similar to the one in question have been held testamentary. There are, however, many cases taking a contrary view of such instruments. In all of these the general rule quoted from UNDERHILL, WILLS, § 37, is recognized, but the court discovers an intention to vest a present interest in the donee, though the time of enjoyment is postponed until after the death of the grantor, and holds that the instrument before it is a deed. In some of these cases further facts appear to show an intention to pass a vested interest than appear in the principal case, e. g., *Phillips* v. *Thomas Lumber Co.*, 94 Ky. 445, 22 S. W. 652, and *Sharpe* v. *Mathews*, 123 Ga. 794, 51 S. E. 706, where the grantor expressly reserves in the conveyance itself a life estate to himself. In some cases, e. g., *Lauch* v. *Logan*, 45 W. Va. 251, 31 S. E. 986, the operative words are held potential, and the only effect given the limiting clause is to postpone the time of enjoyment. The interest is deemed to vest either under the Statute of Uses or under state statutes allowing freeholds to vest in futuro. See *Bunch* v. *Nicks*, 50 Ark. 367, 7 S. W. 563; *Lauch* v. *Logan*, 45 W. Va. 251, 31 S. E. 986; *Kelley* v. *Shimer*, 152 Ind. 290, 53 N. E. 233; *Jenkins* v. *Adcock*, 5 Tex. Civ. App. 466; *Latimer* v. *Latimer*, 174 Ill. 418, 51 N. E. 548; *Elmore* v. *Mustin*, 28 Ala. 309; *Abbott* v. *Holway*, 72 Me. 298; *In re Hall's Estate*, 149 Cal. 143, 84 Pac. 839; *Chancellor* v. *Wyndham*, 1 Rich. Law 161; *Phillips, etc.*, v. *Thomas Lumber Co.*, 94 Ky. 445, 22 S. W. 652; *West* v. *Wright*, 115 Ga. 277; *Sharpe* v. *Mathews*, 123 Ga. 794, 51 S. E. 706. In the principal case the court follows the holdings of the cases cited in the opinion, and concludes that there was no intention on the part of the grantor to vest any interest in the grantee, her husband, until her death; hence that the instrument was testamentary and therefore revocable.